Task Force review of the Yukon Workers' Compensation Act

Phase 3

— Recommendations —

August 1999

Task Force review of the Yukon Workers' Compensation Act

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Task Force review of the Yukon Workers' Compensation Act

Phase 3
— Recommendations —
Final report

The Task Force review:

The mandate of the Task Force review of the *Workers' Compensation Act* is to address issues in three categories:
1. the claims appeal process;
2. accountability to clients (workers and employers); and
3. the Board / Minister relationship.

The task Force review has three phases:
- Phase 1 was an information-gathering opportunity. An Issues Paper, outlining concerns raised by stakeholders, was released for comment. This paper was also the basis of discussion at an Issues Meeting held as part of Phase 1.
- Phase 2 of the review dealt with options to address stakeholder concerns.
- Phase 3 is the final part of the Task Force review. At this point, stakeholders will have the opportunity to review proposed legislative changes that come out of the Phase 2 Options. This review will take place at a meeting of stakeholders with the Task Force chair in September.

Questions?
Please call:
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(toll free from outside Whitehorse)

Legislation covering issues within the scope of this review will be finalized and tabled in the Legislative Assembly in the fall of 1999.

mail comments to:
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e-mail comments to the Task Force at:
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fax comments to:
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This final report of recommendations is also on the Task Force website at www.wcbactreview.yk.net.

Definitions

Board vs board	In this report, the word 'board' refers to administration and staff; the word 'Board' refers to the Board of Directors.
decision-maker	In this report, the word 'decision-maker' includes any person or body that makes a decision in the claims appeal process (adjudicator, first level of appeal, Appeal Panel of the Appeal Commission).
minister	The word 'minister' refers to the Minister responsible for the Workers' Compensation, Health and Safety Board.
stakeholders	Stakeholders include workers and labour organizations, employers and employer organizations, injured workers and the Injured Workers' Alliance, the office of the workers' advocate as well as others who have an interest in the operations of the compensation system.
worker	In this report, the word 'worker' includes all workers and the dependants of deceased workers.
workers' advocate	The term 'workers' advocate' refers to the office of the workers' advocate, not to an individual who is employed by the Public Service Commission.

Yukon Workers' Compensation Act review
— Task Force Recommendations —

Introduction

Over the past three months the Task Force met with a variety of individuals and organizations, all of whom have differing experiences, perspectives and responsibilities for the workers' compensation system in the Yukon. Understandably, a wide range of viewpoints emerged in these discussions and the Task Force has attempted to record these views in both the Issues Paper and Options Paper that were released in March and June of 1999, respectively.

This document summarizes the results of the Task Force by identifying and recommending a number of legislative changes to the *Workers' Compensation Act* (S.Y.T. 1992, c.16). The report also contains several recommendations that are directed to the Workers' Compensation, Health and Safety Board and to the minister responsible for it. In reviewing the recommendations, readers are asked to keep in mind the fact that the compensation system is a complicated regime due, at least in part, to the competing interests and responsibilities of those involved, including:

- the Board of Directors of the Workers' Compensation, Health and Safety Board which has the fiduciary, legal and moral obligation to ensure that the system is applied fairly and respectfully to both injured workers and to those employers who fund the system;
- injured workers whose lives have been changed as a result of a work-related disability and whose personal aspirations and self-esteem can be severely affected by both the injury and by how the compensation system responds to them;
- employers who must ensure that employees have the benefit of a fair and just compensation system while keeping the costs of the system reasonable to protect their own businesses; and
- the Minister responsible for the Workers' Compensation, Health and Safety Board who has the ultimate responsibility, on behalf of the public interest, for the compensation system.

No set of amendments can provide each of these groups or individuals with *all* of the changes that they feel are either required or desirable. To the fullest extent possible, however, the Task Force based its recommendations on points of agreement identified by participants in the review (as indicated by comments received at the two stakeholder meetings and those contained in written submissions). Where consensus was achieved on an issue, the report so indicates.

Where consensus was not reached, the Task Force has considered all of the perspectives offered and has recommended that either the issue be deferred at this time or has recommended an amendment that incorporates, as much as possible, the interests voiced by review participants.

As a final note, it is important to bear in mind two other things. First, there is considerable debate about what level of detail should be incorporated into a statute. The need for certainty and clarity in establishing the legal framework of the compensation system must be balanced with a need for flexibility so that the objects of the system can be realized. With this in mind, the Task Force has made a number of recommendations that call for changes to the *Workers' Compensation Act*. These changes will not, however, answer all aspects of the issue being addressed. Consequently, in several key areas, the Task Force has recommended the development of a policy to support the proposed legislative change. At the same time, the Task Force has recommended changes to ensure that stakeholders have the opportunity to provide their input on policies affecting the claims process. Using this approach, the Task Force has tried to balance the need for legislative certainty with a realistic degree of operational flexibility.

The second consideration involves the costs that may be associated with implementing the amendments. Throughout the review, the Task Force heard that the compensation system should be designed and driven to meet the commitments and obligations made to injured workers in the *Workers' Compensation Act*. The Task Force supports this view. At the same time, the Task Force was also made acutely aware that cost was a major issue for some of the groups and individuals involved in managing and funding the system.

The Task Force has attempted to provide some qualitative information on costs in its earlier work. Noting that uncertainties about costing may be used by some to avoid change, additional costing information, to the extent that such information can be accurately gathered, should be put forward with any legislative amendments that are announced in the Fall of 1999. At that time, the proposed legislative changes can be considered both for their substantive impact on the workers' compensation system and their relative cost.

Laurie A. Henderson,
Task Force Chair

Claims Appeal Process

Recommendation #1

The Task Force recommends that the Act be amended to establish a three-tiered claims process consisting of:

(a) adjudication, where a claim for compensation is heard and decided in the first instance by an adjudicator employed by the board;

(b) a first level of appeal, where an adjudicator's decision is reconsidered by a body or person not involved in the decision-making undertaken by the adjudicator; and

(c) a second level of appeal where a final decision on the claim for compensation will be heard.

(see Recommendations 2, 3 and 4)

Although participants in the review varied as to what specific body should hear claims for compensation, all participants agreed that a three-tiered process was most appropriate. Given the complexity of the system, that often injured workers have had little to no experience dealing with administrative regimes such as the compensation system prior to their injury, and that it is important for the board to have the ability to have a second look at its decisions, the Task Force agrees and endorses the concept of a three-tiered claims process.

Courts have the power to review administrative decisions on the basis of errors in jurisdiction (i.e. where an administrative tribunal has exceeded its statutory limits) or in law (i.e. where it has made a mistake in the way it exercised its decision-making authority — see Recommendation #9). Some stakeholders told the Task Force, however, that they want to expand this power to include an 'appeal on the merits' of the case. This would make it possible for people who are dissatisfied with the decisions of an appeal body to challenge them in court on the grounds that the decision-maker made a factual error.

The Task Force cannot support this suggestion because:

- *the courts recognize the special expertise on a subject matter that tribunals such as those involved in workers' compensation have developed;*
- *it is extremely difficult to have a court reconsider a decision if there is a change in the circumstances of the worker, but an Appeal Panel may reconsider the matter where changes occur;*
- *court challenges can be costly for the worker which defeats the intent of the Meredith Principles; and*
- *there would be a loss of the employee-employer perspective if a single decision-maker (the court) makes the final decision on a claim.*

Recommendation #2

The Task Force recommends that the board institute an annual training program for adjudicators:

- so that adjudicator decisions are made with due attention to the rules of natural justice and administrative fairness, and according to new and revised board policies; and
- so that adjudications are held in such a way that injured workers are treated respectfully, with appropriate understanding given to their personal concerns and frustrations.

The Task Force believes that adjudications should continue to be heard by employees of the board and proposes no legislative amendments in this regard. However, the Task Force heard a number of comments expressing concern about the training received by adjudicators and believes this should be addressed.

Adjudicators play a crucial role in the compensation system. They are often the first introduction an injured worker has to the system. This experience, and the result of the adjudication, determine the tone and nature of the relationship that injured workers have with the board.

Adjudicators should receive training so that they can remain up-to-date on new developments and directions emerging from policy changes or decisions of appeal bodies. This kind of 'continuing education', combined with on-going training on the importance of fairness in decision-making and the conduct of an adjudication (including the role of medical and legal advice in the adjudication process), should, in the view of the Task Force, improve the effectiveness and efficiency of the compensation system.

First level of appeal

(presently the 'Internal Review Committee')

Recommendation #3

The Task Force recommends that the Act be amended to establish that:

- the first level of appeal of a claim for compensation be heard by a body or person designated by the president, noting that this body or person cannot have been involved in making the initial decision on the claim.

Consensus was not achieved among review participants as to who should hear first level appeals.

Various suggestions were made, such as the idea that reviews be conducted by a single appeal officer, an appeal panel of members of the Board of Directors or by the existing internal review committee structure. Participants did agree, however, that:

(a) it is appropriate that the first level of appeal be heard by someone who is working at the direction of the board;
(b) this person/body should be knowledgeable about the claims process and the purpose and intent of the compensation system; and
(c) the person hearing the first level of appeal should not have been involved in the making of the original decision.

The Task Force supports these viewpoints and does not believe that it is either necessary or helpful to refer to those who hear these appeals as 'senior staff'. What is crucial is that the person or body be fully aware of how the principles of natural justice and administrative fairness affect the way the appeal is conducted and a decision rendered. Those who hear appeals must also be familiar with the Act and policies of the Board of Directors to ensure that fair, reasonable and justifiable decisions are made.

It is not necessary, in the view of the Task Force, that these qualifications be placed in the legislation as they, in essence, 'go with the job'. However, in establishing policies that speak to the functions, responsibilities and obligations of this first level of appeal, the Task Force strongly suggests that the Board of Directors identify and highlight the two points mentioned in paragraphs (a), (b) and (c) above.

Recommendation #4

The Task Force recommends that the Act be amended to establish an Appeal Commission, independent of the Board of Directors, that will sit as Appeal Panels, to hear the final appeals of claims for compensation. (The Appeal Commission will hear only appeals for compensation; it is not recommended that it hear either assessment appeals or appeals involving occupational health and safety matters.)

1. Structure:
The Appeal Commission shall:

(a) be appointed by the Commissioner in Executive Council on the same conditions respecting term, tenure, vacancies and remuneration as the Board of Directors;
(b) be independent of the Workers' Compensation, Health and Safety Board (i.e. separation of governance from adjudication at the final appeal stage);
(c) have two worker and two employer representatives with a neutral chair; and
(d) the chair of the Commission shall sit as a non-voting member of the Board of Directors for the purpose of continuity and understanding of policies established by the Board of Directors.

2. Appeal Commission:
The Appeal Commission shall:

(a) have the power to establish rules and procedures for Appeal Panel hearings and for the conduct of their own internal affairs;
(b) be required to submit an annual statement of activities, within three months of the end of the calendar year, reporting on the number of appeals heard, resolved and pending, as well as other information concerning their activities over the year to the Minister responsible for the Workers' Compensation, Health and Safety Board and to the Board of Directors and which shall be available to the public; and
(c) have its costs paid for out of the Compensation Fund.

3. Appeal Panel

(a) the Commission shall hear appeals in panels of three (one worker, one employer and the chair of the Appeal Commission);
(b) the jurisdiction of an Appeal Panel shall be, as appropriate, adopted from s.96 of the Act;
(c) an Appeal Panel shall be bound by the Act and all policies established by the Board of Directors;
(d) decisions of an Appeal Panel shall require two agreeing votes and where there is no agreement, the chair shall direct that a new hearing be held before a new panel;
(e) the Board of Directors may, in writing and with reasons, direct an Appeal Panel to rehear a matter where it reasonably believes that a decision of the Appeal Panel does not comply with policies of the Board of Directors or the Act and the chair of the Appeal Commission may not take part in any decision of the Board of Directors on these issues;
(f) the Appeal Panel should have the power to reconsider a decision if new evidence emerges or a change in material circumstances occurs; and
(g) all decisions of an Appeal Panel are final and are not open to question or review in any court.

4. Implementation of Appeal Panel decisions:

(a) The board shall implement decisions of the Appeal Panel within 30 days of its decision or the board will develop an implementation plan for the decision and provide it to the Appeal Panel and the worker within 30 days of an Appeal Panel decision.

The Task Force participated in a number of discussions regarding the advantages and disadvantages of an independent appeal body versus continuing with the present approach, where the members of the Board of Directors form appeal panels to hear final claims appeals. Although there was no consensus as to which approach was preferable, all review participants stressed the need for fair, unbiased decision-making based upon the goals, objectives, duties and responsibilities of the compensation system as articulated in the Act.

The Task Force believes that if the Board of Directors continues to have the dual role of adjudicating final claims of appeal and of ensuring that the compensation system remains financially solvent, concerns about conflict of interest, real or perceived, will never be effectively addressed. Separation of the two roles is the only way to make sure that concerns respecting bias are eliminated. At the same time, the Task Force is of the view that the Act and the policies established by the Board of Directors must frame the parameters within which an independent appeal body works to ensure that the decisions of the Appeal Panel, while fair and unbiased, are grounded in and supported by the legislative and policy framework of the compensation system.

Appointment of the chair of the Appeal Commission to the Board of Directors as a non-voting member should also ensure that the necessary links between the two bodies are maintained. The fact that this person will not have a vote on any given appeal should lessen concerns about bias in this dual role.

Recommendation #5

The Task Force recommends that the Act be amended to provide that:

(a) decisions, orders and rulings made in the claims process be based upon the merits of the case and in accordance with the Act, regulations and policies of the Board of Directors; and

(b) notwithstanding anything contained in the Act, on any application for compensation an applicant is entitled to the benefit of the doubt which means that where there is doubt on an issue respecting the application and the disputed possibilities are evenly balanced, the issue shall be resolved in the worker's favour.

The Task Force believes that the two principles in the recommendation should underlie decision-making in adjudicating claims for compensation. In keeping with a number of other jurisdictions across the country, the Task Force believes that it is appropriate to include these principles within the *Workers' Compensation Act* to confirm their important role in the system and to remind workers, employers and decision-makers of these principles.

Recommendation #6

The Task Force recommends that timelines that identify when an appeal body must make a decision be established in law, in regulations made under the Act, for both the first level of appeal and the final level of appeal as follows:

(a) as soon as practicable and in any case
  (i) within 90 days of the date when the appeal is heard; or
  (ii) in the case of an Appeal Panel, a longer period as may be determined by the chair of the Appeal Panel when the appellant requests a delay or when the chair considers a longer period necessary in the circumstances, including the circumstances of the complexity or uniqueness of the matter under appeal or when the Appeal Panel needs direction or clarification from the Board of Directors as to applicable policies;

(b) where a timeline is extended as set out in paragraph (ii), the chair of the Appeal Panel shall notify the appellant, the board and any other involved parties of the extension with written reasons; and

(c) that timelines be reviewed within two years of coming into effect to determine if they adequately address the balance between providing certainty in knowing when a decision will be made and the time needed to ensure sound decision-making.

The Task Force did not hear consensus on the issue of timelines from review participants. However, a strong majority of stakeholders indicated that timelines should be imposed upon decision-makers in the claims process. In consideration of these viewpoints, the Task Force is prepared to recommend imposition of time limits with two important reservations.

First, it is recognized that most matters are appealed, at least in part, due to their complexity and that circumstances may change such that new information has been, or must be, obtained.

Second, it is extremely difficult to determine what the appropriate time limit is for hearing and deciding upon an appeal. If a time limit is to be effective, appellants need to know when a decision will be rendered and decision-makers need to be assured that the time limit is reasonable so that good, well-reasoned decisions can be made.

With these two issues in mind, the Task Force supports an amendment to the Act which calls for timelines to be established in regulations so that they have the force of law, but also so that they can be more easily amended if the recommended timelines prove to be too long or too short. Further, the timelines must be discretionary to the extent that the chair of an Appeal Panel has the power to extend the timeline where circumstances dictate. Such circumstances include delays requested by the appellant and where the complexity of the case dictates that more time will be required. Where timelines are extended, notice should be provided by the chair of the Appeal Panel to the appellant, the board and to any other involved party.

Some review participants spoke in favour of timelines when appeal is filed by a worker or an employer, but the majority of stakeholders did not support such timelines. Consequently, the Task Force is not recommending that timelines be imposed on when an appeal can be filed.

Written reasons

Recommendation #7

The Task Force recommends that the Act be amended to require that:

(a) written reasons be provided for all decisions made on claims for compensation, excluding those decisions which are related to procedural matters; and

(b) reasons be written in plain language so that workers and, if appropriate, employers, can understand how and why the decision was made.

The Task Force is aware that the policy established by the present Board of Directors is to issue written reasons for all decisions. This recommendation reinforces this direction and clarifies that reasons should be provided for all decisions made on claims matters. With respect to the content of written reasons, the Task Force accepts that prescribing their content may lead to difficulties given the different types of decisions that may be made during the claims process. However, the Task Force recommends that the Act be amended to confirm that the written reasons must be adequate to enable a reader to understand the rationale behind the decision so that injured workers and employers, know how and why decisions are made.

Alternative dispute resolution

Recommendation #8

The Task Force recommends that: no amendments be made respecting the use of alternative dispute resolution

For a variety of reasons, review participants rejected the option of enabling the use of alternative dispute resolution in the *Workers' Compensation Act*.

The Task Force accepts this direction and recommends that no amendments be made on this matter.

Judicial reviews

Recommendation #9

The Task Force recommends that the Act be amended to confirm that: a judicial review of a decision of the Appeal Panel may be initiated for errors in law or in jurisdiction.

The Task Force is aware that workers or employers presently can appeal a decision of the Appeal Panel on the basis of an error in law or in jurisdiction. To assist injured workers, employers and others who may not be aware of the role of the judiciary in administrative tribunals where errors in law or jurisdiction are at issue, the Task Force recommends including a provision which states when issues may proceed to court.

A small number of review participants suggested that they want the Workers' Compensation Act to be amended to give them broad powers to sue the Workers' Compensation, Health and Safety Board and its employees. The Task Force cannot support this suggestion.

Administrative tribunals bear increasing legal responsibility for harmful acts or omissions. However, where a public official makes a decision that adversely affects the rights of others, the official will be protected at common law from legal action for damages provided the official has not acted in bad faith. Acts of bad faith include malicious or fraudulent acts, intentional misuse of power and acts motivated by improper considerations. An administrative tribunal has not acted in bad faith simply because a person does not agree with decision made by it. In the view of the Task Force, this level of protection should not be eroded. The people making decisions on claims must retain the freedom to act within the discretion provided in the Workers' Compensation Act. A decline in this freedom may result in a reluctance to exercise discretion and lead to a more formal and complex process of making decisions on claims of compensation to protect against a real or perceived risk of liability.

Medical reviews

Many stakeholders expressed considerable concern about how opinions and advice received from treatment-givers are used in the compensation system.

In the view of the Task Force, this concern flows, in part, from the reliance that may be placed on medical advisers in view of the extremely complex medical issues that may confront decision-makers respecting entitlement, as well as the treatment and rehabilitation of injuries sustained by workers.

The confusion also comes, however, from a lack of clarity in the Act as to the role of the board's medical consultant in the claims process and how medical examinations will be used. This is especially so where there is a conflict or inconsistency in the medical information provided to decision-makers. The Task Force recommendations (Recommendations 10, 11 and 12) attempt to address these two issues, first in legislation and then by policy.

Recommendation #10

The Task Force recommends that the Act be amended to enable the president to appoint one or more medical consultants with responsibility for:

(a) providing information and advice to the board on medical issues that are involved in claims matters;
(b) playing an education role vis à vis medical issues facing the board; and
(c) performing other duties related to providing medical advice and information as determined by the president.

The Task Force appreciates that the medical consultant retained by the board plays a crucial role in assisting decision-makers on claims matters. The Task Force also believes that the president, as the person responsible for the administration of the compensation system, should have the ability to determine the responsibilities of this position and, indeed, to decide if a medical consultant should be retained at all.

It is not the intention of the proposed amendment to alter this relationship nor to restrict unduly the responsibilities that may be assigned by the president to the medical consultant. This being said, the Task Force is of the view that it is imperative that the role of the medical consultant be to provide medical information and advice and not to influence decisions respecting claims for compensation. In proposing this amendment, which confirms the role of the board's medical consultant vis à vis medical advice and information, the Task Force hopes that the role of the medical consultant can more effectively be separated from that of the decision-makers.

Recommendation #11

The Task Force recommends the Act be amended to confirm the role of a medical practitioner to provide independent medical advice in the following situations:

(a) decision-makers may request an examination or opinion when they identify a conflict or inconsistency in the medical advice received by them respecting a claim for compensation or when they believe an independent examination or opinion will assist them in their decision-making due to the complexity or uniqueness of the medical matters involved in the claim;

(b) workers may request an examination when they reasonably believe:

(i) they suffer or have suffered a greater functional impairment than decided by the decision-maker;

(ii) they suffer or have suffered a greater limitation in working capacity than decided by a decision-maker; or

(iii) the decision of the decision-maker was based on a physician's report that was erroneous or incomplete; and

(iv) the request is accompanied by a letter from a physician or other recognized treatment-giver that states, in that person's opinion, there is a *bona fide* medical question related to the belief of the worker making the request, and sufficient particulars are provided to define the matter at issue; and

(c) employers may request an examination or opinion where they state, in writing, why the request has been made and that they are prepared to pay the cost of the examination.

The Task Force further recommends that the Act confirm that:

(a) the results of the independent medical examination or independent medical opinion are binding as to the medical information offered on the decision-maker, worker and employer to the extent that the medical information offered addresses the issue that prompted obtaining the independent examination or opinion;

(b) workers must be involved in selecting the independent medical examiner or opinion-provider;

(c) workers must be involved in framing the question or issue put to the examiner/ opinion-provider; and

(d) independent medical examinations or opinions may be sought or obtained from either an individual physician or a panel of physicians.

Recommendation #12

The Task Force recommends that:
the Board of Directors establish policies and accompanying information materials that clearly state:

(a) how medical information, advice and opinions are to be obtained (i.e. medical advice and not decisions on claims for compensation) and used in resolving claims of compensation; and

(b) the role and rights of workers and employers regarding the selection of physicians and use of the information provided by these individuals

Physicians and other treatment-providers play a fundamental role in assisting workers, employers and decision-makers in understanding the many medical issues that may arise in a claim for compensation.

Review participants confirmed the importance of these individuals, but in doing so they expressed concern about the role of workers and employers in selecting the individuals who would be asked to provide medical advice on a claims matter.

The Task Force is of the view that workers should, in the first instance, be able to consult and seek advice and input on their claim from a treatment provider of their choice. Similarly, the board should, at its discretion, be able to require a worker to obtain a medical examination. The Act already confirms these two possibilities and no change is recommended to these sections. Should, however, the medical advice provided at this stage, in relation to a claim for compensation, leave some matters unresolved or should opinions conflict, it is necessary that 'third party' or independent medical advice be sought. It is in this area that the Task Force believes that legislative amendments should be made.

Based upon the input from review participants, the Task Force has recommended several changes designed to clarify who, may seek an independent medical opinion, when they may ask for the opinion, and what the role of workers is in the process. Further, as a result of comments made by review participants respecting this complex issue, the Task Force believes it is important that the Board of Directors establish policies and comprehensive information materials for decision-makers, workers and employers that clearly indicate the roles and responsibilities of medical advisers, as well as the role and rights of workers and employers in selecting physicians and in using information provided by these individuals.

Recommendation #13

The Task Force recommends that the Act be amended:
to enable, where appropriate and reasonable, the use of alternative treatment options desired by injured workers in the treatment of work-related disabilities.

A number of stakeholders suggested that alternative medical therapies should be considered in the treatment of work-related disabilities. At present the Act does not preclude such treatment and in fact, to a certain extent, the compensation system has already accommodated, by policy, the use of some alternative treatments.

The Task Force recommends this amendment to support existing policy direction on this matter and to ensure that alternative treatments remain an option for workers.

There are an increasing number of medical conditions that evolve slowly over time and have more than one cause. This may make them highly controversial from a treatment and compensation perspective. Some medical professional organizations point to the lack of scientific and clinical evidence to support theories or treatment regimens. The difficulty lies in the elusiveness of consistent physical symptoms. Until these types of medical conditions can be characterized as distinct 'disease' entities, their legislative and legal recognition remain doubtful.

In the meantime, medical insurers may take the position that they will authorize only the cost of 'mainstream' treatment validated by clinical trials. The Yukon Health Care Insurance Services and the Workers' Compensation, Health and Safety Board adopt a similar position, but they also recognize that scientific knowledge changes over time. When new information and findings become available and are examined, policies and procedures are adjusted accordingly. The Task Force agrees with this approach from the standpoint of reasonable public policy.

Status of board staff at appeal hearings

Recommendation #14

The Task Force recommends:
no amendment be made to the Act to address standing of board staff at appeal hearings.

Some stakeholders expressed considerable concern about board staff appearing at appeal hearings to defend or explain a lower level decision.

This position was not, however, supported by all review participants, particularly where issues of jurisdiction are involved and where an independent appeal panel, as has been recommended, is involved.

The Task Force believes that, generally speaking, written reasons for decisions should be adequate to explain how an earlier decision was made and that the decision-makers should not become a 'party' in an appeal. At the same time, the Task Force believes that those hearing an appeal should have the authority and ability to control their own procedures, including making determinations on standing. Consequently, the Task Force makes no recommendation on standing and leaves this to the discretion of appeal bodies to determine what is appropriate in each circumstance.

Use of policies in the appeal process

Recommendation #15

The Task Force recommends that:

- paragraph 93(a) of the Act be amended to clarify that the Board of Directors has the power to establish polices rather than approve policies; and
- paragraph 93(h) of the Act be amended to ensure that all policies established by the Board of Directors related to claims for compensation are available to the public.

The Task Force has been advised that all claims-related policies established by the Board of Directors are presently available to stakeholders and the public through a variety of sources. The recommended legislative change supports this policy by expanding existing language in the *Workers' Compensation Act* that requires only policies relating to claim procedures, assessment procedures and occupational health and safety be made publicly available.

The Board of Directors has the legal authority and responsibility for establishing the policies that underlie the implementation of the compensation system. The present language of 'approving' policy is not, in the view of the Task Force, sufficiently clear in confirming the preeminent role of the Board of Directors in this regard. A clarification that the Board of Directors establishes policy should avoid confusion in roles and responsibilities in terms of setting policy.

Recommendation #16

The Task Force recommends that the Act be amended to:
require the Board of Directors to provide notice to stakeholders of all draft policies affecting claims for compensation to enable stakeholders to submit input on the policies and that the Board of Directors allow no fewer than 30 days for such input to be received before establishing the policy;

and
the Task Force recommends that:
the Board of Directors establish a committee of stakeholder representatives for the express purpose of reviewing and providing input on policies that the Board of Directors believes are important in resolving claims for compensation or that committee members reasonably believe should be subject to review and input by stakeholders.

The *Workers' Compensation Act* is designed to establish the fundamental principles and procedures for the compensation system. It does not, and practically cannot, fully articulate all aspects of how the system will be implemented. This is properly the role of policy. These policies, however, must be drafted to establish guidelines that can be interpreted and applied where discretion exists in making decisions respecting claims for compensation. Further, they must be consistent with the specifics of the *Workers' Compensation Act* as well as its spirit and intent.

Stakeholders who participated in the Task Force review spoke strongly about the need to have an opportunity to provide input on policies before they are established by the Board of Directors. The Task Force is of the view that opening policies to input prior to adoption enables stakeholders to voice their views onthe consistency of the draft policy with the Act and to more fully explore how stakeholders believe the policy will or will not assist in advancing the compensation system. At the same time, it must be understood that defining a role for stakeholders in policy development carries with it a serious responsibility of effective and on-going participation by stakeholders. As well, it is imperative that the compensation system not become bogged down in consultation and review requirements that apply to all policies as not all policies will require or attract the same level of interest and concern by stakeholders.

The Task Force has attempted to balance the interest of having an opportunity to comment on policies with placing the responsibility on stakeholders to participate either informally, as a result of a notice that a policy has been drafted, or more formally, on a policy review committee established by the Board of Directors.

The term 'policy' can have several meanings, ranging from broad government objectives through to procedural details. What is meant by 'policy' in this recommendation, and in Recommendation 4 which states that an Appeal Panel is bound by the policies established by the Board of Directors, are those types of policies which provide guidelines that should be applied (i.e. given active consideration) by those who exercise discretion in making decisions on claims for compensation. To ensure, however, that a decision-maker continues to have the discretion to make decisions respecting claims for compensation, the Task Force believes that these policies must not be drafted so as to require a particular outcome on a particular matter and they must be consistent with the specifics as well as the spirit and intent of the Act.

Recommendation #17

The Task Force recommends that the Act be amended to establish the office of the Workers' Advocate:

(a) independent of the Board of Directors and board administration;

(b) the duties of the office shall include:

  (i) advising workers on the intent, process and procedures of the Yukon compensation system, including the administration of the *Workers' Compensation Act*;

  (ii) advising workers on the effect and meaning of decisions made on their claims for compensation; and

  (iii) assisting workers, or at their request, representing them throughout the claims process;

(c) the office shall have the power to refuse to assist or represent workers where, in the opinion of the office, their expectations are unreasonable and further interaction with them would be unproductive;

(d) the office shall be staffed by government employees hired by the Public Service Commission;

(e) the office shall submit an annual budget to the Minister of Justice who shall consult with the Board of Directors prior to approving the budget;

(f) approved expenses of the office shall be charged against the Compensation Fund; and

(g) the office shall submit an annual statement of activities to the minister and make this report available to organizations representing workers and injured workers, the Board of Directors, and to the public.

Stakeholders who participated in the Task Force review strongly supported entrenchment of the office of the workers' advocate in the *Workers' Compensation Act*. This being said, the office must be subject to regular reporting requirements as well as periodic scrutiny and evaluation to determine its effectiveness and efficiency and to ensure that the job to be done has been done.

With this in mind, the Task Force endorses the entrenchment of the office of the workers' advocate in the Act.

Recommendation #18

The Task Force recommends that:
the Board of Directors revise its policies that establish the criteria to be applied in the exercise of its discretion on the collection of overpayments to include, in addition to existing criteria, that overpayments will not be collected where:

(a) the overpayment occurred three years or more before the board became aware of the overpayment;
(b) the overpayment resulted from an appeal decision which reduced entitlement; and
(c) a worker has, in good faith, relied on the compensation payment to the exclusion of collecting from other income replacement sources (e.g. unemployment insurance, personal and group insurance) and income cannot be collected from these sources to replace the overpayment.

The Task Force also recommends that:
the *Financial Administration Act* be amended to provide the board with greater flexibility to exercise discretion in collecting payments.

Several review participants stated that they believe that the board should not collect overpayments when they are made as a result of an administrative error on the part of the board. This viewpoint, as well as those suggesting that overpayments should not be collected in other situations, was not supported by all review participants. Section 89 of the *Workers' Compensation Act* gives the Board of Directors the discretion to determine whether or not an overpayment should be collected. The *Financial Administration Act*, which governs many aspects of the financial administration of the board, also establishes limits on the board with respect to the collection of overpayments.

The Task force cannot support a broad legislative amendment which would prevent the collection of overpayments made in error to a worker. At the same time, the Task force is of the view that discretion should be exercised when enforcing collections and it supports the approach of establishing in policy the situations in which collections will be considered. In this context, the Task Force recommends that the Board of Directors re-evaluate policy CL43 as well as other related policies and consider expanding the situations in which overpayments will not be collected.

Payment of interest on entitlement decisions

Recommendation #19

The Task Force recommends that:
the Act be amended to enable the payment of interest on claims for compensation that deal with wage replacement, consistent with conditions for payment of interest as determined by policy of the Board of Directors.

A majority of review participants endorsed the concept of paying interest.

The Task Force appreciates that additional costs may be incurred by introducing payment of interest on outstanding funds owed to a worker. At the same time, in light of the lost opportunity to the person owed the money and the fact that payment of interest is government policy on its debt obligations, the Task Force recommends that payment of interest be enabled and that it be awarded where determined by a decision-maker to be appropriate.

Suspension or reduction of compensation

Recommendation #20

The Task Force recommends that section 7 of the Act be amended by:

- adding the word 'unreasonably' to paragraphs (a), (b) and (c); and
- clarifying that where the board has suspended or reduced compensation this decision may be appealed to the Appeal Commission.

Many review participants raised concern about the broad discretionary power of the board to reduce or suspend compensation — a power that could be exercised without consideration of reasonableness or allowing workers to discuss the matter with the board prior to the reduction or suspension. The Task Force agrees with this view, while also recognizing that the board ultimately should continue to have the ability to suspend or reduce compensation in situations:

- where workers uneasonably refuse to participate in treatment or rehabilitation programs; or
- where workers participate in activities that would, if given due consideration, be seen to imperil or delay recovery; or
- if workers unreasonably change treatment-givers without a referral or without notifying the board.

The recommendation introduces some limitations on the discretion of the board and clarifies that workers have the right to be heard where they are affected by a decision of the board to reduce or suspend compensation payable by appealing this decision.

> *Section 7 of the Yukon Workers' Compensation Act states:*
> *The board may suspend or reduce compensation payable to or in respect of a worker, if the worker*
> *(a) refuses to submit to treatment or rehabilitation the board considers essential to the workers' recovery or rehabilitation,*
> *(b) takes part in any activity that imperils or delays recovery from the disability, or*
> *(c) changes medical practitioners without a referral from the previous medical practitioner or without the permission of the board.*

Accountability of the Board to employers and workers

Recommendation #21

The Task Force recommends that: the Act be amended to require the chair of the Board of Directors and the president to appear annually before the Legislative Assembly.

Accountability of the Board of Directors to employers and workers continues to be of fundamental concern to review participants and was intensely discussed by stakeholders at the meetings convened by the Task Force. The Task Force is, however, acutely aware that there is a fine balance between ensuring that the Board of Directors has the autonomy, within the scope of the *Workers' Compensation Act*, to direct the operations and activities of the compensation system, and the need for the Board to be accountable to the minister and stakeholders.

The recommendations (Recommendatons 21, 22, 23 and 24) put forward by the Task Force endeavour to address client concerns about accountability without compromising the authority and jurisdiction of the Board of Directors. The Task Force endorses them in the spirit of improving relationships between the board and its clients, as well as building upon performance initiatives already advanced by the board to enhance the overall effectiveness and efficiency of the compensation system.

The Task force believes that a special examination of the compensation system should be conducted to enhance performance and to build confidence among workers, injured workers, employers and the board. To achieve these objectives, the examination must be conducted by an independent third party, skilled in assessing issues of efficiency and effectiveness. In addition to 'who' conducts the examination, however, the Task Force believes that it is imperative that some degree of independence accompany determinations of 'what' is to be examined. In other words, just as the examination must not be conducted internally, the scope of the examination should not be defined solely by those responsible for administering the system. Recommendation # 22 attempts to balance this perspective with the knowledge that those most responsible for the system, namely the board, should be integrally involved in establishing the timelines for the examinations and setting the scope of examination.

For two reasons, the Task Force does not believe that it is realistic to expect that a special examination of the entire workers' compensation system can be conducted immediately. First, two new components of the compensation system are being added to the legislative regime: the office of the workers' advocate and the independent Appeal Commission. It is neither effective nor efficient to review the work of these two groups until they have established their role in the system. Similarly, it is debatable as to whether or not there is much value in examining the adjudication of claims, at all levels, if the process as it exists now is going to change.

The second reason is cost. Considerable time must be taken in conducting the examination called for by the Task Force. To ensure that the system can continue to operate, the Task Force recommends that the special examination be phased in over the next 10 years, noting however than an examination of the administration and operations of the board must be started as soon as is practicable. Work conducted to date on a special examination (operational audit) should be incorporated into the planning of the special examination as recommended by the Task Force.

Recommendation #22

The Task Force recommends that: the Act be amended to require a periodic special examination of the compensation system as follows:

(a) the entire workers' compensation system, including the role of the board, the Board of Directors, the office of the workers' advocate and the Appeal Commission in the system will be subject to evaluation within 10 years of the sections respecting the special examination coming into effect;

(b) the Board of Directors shall submit to the minister, within 90 days of the provisions calling for the special examination coming into effect, a plan detailing the scheduling of the special examination of the various elements of the compensation system, including administration and operations, adjudication of claims for compensation (all levels), and assessments, over the next 10 years; and

(c) notwithstanding paragraph (b), a special examination of the operations and administration of the Workers' Compensation, Health and Safety Board shall begin no later than six months after provisions for the special examination come into effect.

Furthermore, the special examination shall be conducted according to the following procedures and guidelines:

(a) the examiner for the special examination shall be appointed by the Commissioner in Executive Council following consultation with the Board of Directors;

(b) for the purposes of the special examination, the examiner will have access to all records, documents, books, accounts, vouchers and other information in the possession of the board administration and the Board of Directors, the office of the workers' advocate and the Appeal Commission that the examiner deems to be necessary to effectively and efficiently conduct the examination;

(c) in keeping with the scheduling plan to be submitted by the Board to the minister, the details of the scope of the special examination shall be determined by the Minister responsible for the Workers' Compensation, Health and Safety Board in conjunction with the Board of Directors, following consultation by the minister with the Appeal Commission, the office of the workers' advocate and representatives of organizations representing workers, injured workers and employers, but the examination shall ultimately be designed to assess the efficiency, effectiveness, environment and economy of the workers' compensation system;

(d) the examiner shall call attention to all matters within the scope of the examination that in the examiner's opinion should be brought to the attention of the Board of Directors, the minister and the Legislative Assembly;

(e) the results of the special examination shall be reported to the Board of Directors, which shall immediately table a copy of the report with the Minister responsible for the Workers' Compensation, Health and Safety Board, the Appeal Commission and the office of the workers' advocate and make it available to the public; and

(f) if the examination is conducted by an examiner not employed by office of the Auditor General of Canada, the cost of the special examination shall be paid out of the Compensation Fund.

Recommendation #23

The Task Force recommends that the Act be amended to separate the reporting requirements of the Board of Directors as follows:

(a) the Board of Directors shall submit an audited financial statement, to be prepared as described in s.49 of the Act, to the Minister responsible for the Workers' Compensation, Health and Safety Board and tabled with the Legislative Assembly within 15 days after it has been published if the Assembly is sitting or otherwise within 15 days after the commencement of the next session;

(b) the Board of Directors shall submit an annual report of activities of the board to the Minister responsible for the Workers' Compensation, Health and Safety Board, within three months of the end of the calendar year; and

(c) both the financial statement and the annual report of activities shall be made public within 30 days of being submitted to the Minister responsible for the Workers' Compensation, Health and Safety Board.

Review participants expressed considerable frustration about delays in the issuance of the annual report by the board, but the Task Force was unable to clearly identify the cause of these delays. Regardless, in order to provide the board with greater flexibility in its reporting requirements, the Task Force endorses the direction provided by most review participants; namely, to separate the financial reporting requirements from reporting on the annual activities of the board.

Annual information meeting

Recommendation #24

The Task Force recommends that the Act be amended to:

- require that the annual information meeting be held within three months of the public release of the audited financial statement of the Board of Directors and be held for the purpose of reporting to workers, injured workers and employers on the administration of the compensation system; and
- require the board to produce a summary report on each annual information meeting which shall be made available to the public.

Review participants all agreed that an annual meeting can serve a useful accountability function among the board, employers, workers and injured workers. Some concern, however, was expressed as to its timing and follow-up to confirm the material presented and comments advanced by participants at the meeting.

The Task Force endorses keeping the requirement for the annual information meeting in the *Workers' Compensation Act*, with the addition of some detail respecting timing and reporting following the meeting. At the same time, the Task Force encourages the board, as it is presently doing, to involve the public and stakeholders in other ways in the exchange of information and ideas regarding the direction and implementation of the compensation system.

Access to information and protection of privacy

Recommendation #25

The Task Force recommends that: the Department of Justice review the *Workers' Compensation Act* to identify and amend as appropriate, provisions that conflict with the *Access to Information and Protection of Privacy Act*. Specifically, this review should consider those sections of the Act that address the use and ownership of medical reports to ensure that the privacy of workers is protected as directed by the *Access to Information and Protection of Privacy Act*.

The Yukon *Access to Information and Protection of Privacy Act* reflects current government direction on these matters and no comments were made by review participants that indicated this situation should be changed.

The *Access to Information and Protection of Privacy Act* provides that it is paramount to other statutes, including the *Workers' Compensation Act*. However, the Task Force believes that should the Department of Justice, in the course of drafting legislative amendments as a part of this review, determine that inconsistencies exist between the two statutes, such amendments should be put forward at this time.

Recommendation #26

The Task Force recommends that: the Act be amended to require the board to establish a public register, accessible during business hours, that contains all policies, rules and procedures of the board relating to claims for compensation, the rules and procedures of the Appeal Commission and other information as determined by the Board of Directors.

The Task Force heard from review participants that accessibility of information was critical to their understanding of the compensation system and to their effective participation in a claim for compensation that they may file. At present, the board makes such information accessible to the public.

This recommendation supports the policy direction of the Board of Directors and further entrenches the right of the public to access this material.

Client service and satisfaction

Recommendation #27

The Task Force recommends that the Act be amended to:
establish in the objects of the Act the principle of dealing with employers, workers and injured workers with compassion, respect and fairness.

The Task Force view is that review participants agreed that client service and satisfaction cannot be mandated in legislation. However, the principles of compassion, respect and fairness should underlie all activities of the workers' compensation system and should be entrenched in the objects of the *Workers' Compensation Act*.

Some review participants discussed the fact that the objects of the Workers' Compensation Act should be amended to state that the system should be conducted 'by law'.

The Task Force is of the view that this suggestion will not provide any greater legal certainty to an injured worker than is already contained in the Act. The board is obligated to undertake all of its activities and make decisions on compensation in accordance with the Act. All of its decisions must be made 'by law'; adding these words will have no substantive legal consequence.

The Task Force has recommended a number of legislative amendments which should strengthen and clarify the duties and responsibilities of the board vis à vis its interaction with injured workers, workers and employers. The Task Force believes that many of these recommendations address the fundamental concerns of those supporting the addition of 'by law' in the objects of the Act and in doing so create or clarify the legal obligations and responsibilities of the board to injured workers, workers and employers more effectively than the addition of the words 'by law' could do.

Accountability between the minister and the board

Recommendation #28

The Task Force recommends that the Act be amended to:
confirm that the minister cannot become involved in the resolution of a claim for compensation.

The Task Force also recommends that:
the Board of Directors and the Minister responsible for the Workers' Compensation, Health and Safety Board review existing mechanisms for communication between the two offices to ensure that the legislative requirements for timely reporting on matters about which the minister may request information are met.

Most review participants acknowledged that because the Workers' Compensation, Health and Safety Board is a public institution, the minister has ultimate responsibility for it. At the same time, most participants viewed it as inappropriate for the minister to in any way, direct or otherwise, become involved in the resolution of a claim for compensation. Stakeholders also expressed concern about government potentially interfering with the ability of the Board of Directors to direct, manage and implement the compensation system to the best of its ability and as provided for in the Act.

The Task Force discussed with review participants the possibility of the minister issuing directives on matters relating to the exercise of the powers of the Board of Directors. Due to a lack of consensus on how to limit the minister's ability to be involved in the activities of the Board, the Task Force has declined to make any recommendation on this matter beyond suggesting that the Board and the minister review existing reporting mechanisms to ensure that the reporting requirements of the Board to the minister are adequately and efficiently implemented.

A number of review participants suggested that appointments to the Board should be made by the Legislative Assembly. A number of other participants opposed this view.

The Task Force has considered this matter and concluded that it cannot support this suggestion. At present, nominations to the Board of Directors are made following consultation with employers and employer organizations, and workers and organized labour. The Task Force has recommended that this consultation process be expanded (see Recommendation #30) to ensure that injured workers and unorganized labour, as well as Yukon First Nations and Yukon Indian people, and women in their capacity as employers and employees, are involved in the appointment process. If this recommendation is implemented, it does not appear advisable to the Task Force to have this nomination process put at risk by the nominations going before the Legislative Assembly.

Furthermore, the Task Force recommends (see Recommendation #21) that the Workers' Compensation Act be amended so that the chair of the Board of Directors and the president appear before the Legislative Assembly on matters relating to the administration of the board. This should ensure that all elected officials have the opportunity to question the activities of the board and to put forward their views on the management of the compensation system.

Taken together, these changes, as well as others recommended by the Task Force, should enhance accountability to injured workers, workers and employers without necessitating the involvement of the Legislative Assembly in appointments to the Board of Directors.

Appointments to the Board of Directors

Recommendation #29

The Task Force recommends that the Act be amended to:

- enable the minister to increase the size of the Board of Directors (i.e. voting members) by appointing a minimum of two and a maximum of three members representing employers and a minimumof two and a maximum of three members representing workers; and
- require that persons appointed to the Board be familiar with the purposes and objectives of the compensation system.

Although not all review participants supported the idea of entrenching the qualifications of persons to be appointed to the Board of Directors in the *Workers' Compensation Act*, the Task Force did hear strong support for identifying qualifications on appointment. At the same time, the Task Force is concerned that even though stating these qualifications in the *Workers' Compensation Act* may assist in the selection of qualified individuals, these provisions will not fully resolve debates as to whether a given individual is 'qualified' in the eyes of all of those who are interested in the administration of the compensation system. Thus, while the inclusion of a general statement of qualifications is endorsed by the Task Force, a provision describing in detail the qualifications cannot be recommended.

It is the view of the Task Force that good appointments will come more from broadening the consultation process that precedes appointments rather than entrenching qualifications in the *Workers' Compensation Act*.

Recommendation #30

The Task Force recommends that the Minister responsible for the Workers' Compensation, Health and Safety Board:

expand the consultation process described in the *Workers' Compensation Act* by advertising vacancies in appointments so that, to the greatest extent possible, all employers and workers can become involved in the appointment process and to more fully ensure that unorganized labour, injured workers, and Yukon First Nations, Yukon Indian people, and women in their capacity as employers and employees, are adequately represented on the Board of Directors.

It is with this in mind that the Task Force recommends expanding the consultation process for identifying potential Board members. Further in this regard, in light of the changing environment of the Yukon and the workload associated with being a member of the Board of Directors, the Task Force believes that it is both appropriate and reasonable to expand the size of the Board of Directors.

Tenure of the Board of Directors

Recommendation #31

The Task Force recommends that:

the Act be amended to ensure that members of the Board of Directors can be removed from office only for cause.

Many review participants spoke in favour of appointments to the Board being revokable only for cause. The Task Force endorses this position.

Duties of the Board of Directors

Recommendation #32

The Task Force recommends that the Act be amended to confirm that the duties of the Board of Directors are to:

(a) ensure that workers and their dependents and employers are treated in a fair and reasonable manner;

(b) act in good faith when conducting the business of the board and in administering the workers' compensation system; and

(c) maintain confidentiality in matters respecting claims for compensation when discussing or conducting the affairs of the compensation system.

Most review participants supported the inclusion of duties of the Board of Directors in the *Workers' Compensation Act*.

The duties stated in the recommendation are implicit in the existing Act by virtue of the legal obligations and responsibilities of the Board created in it. However, the Task Force accepts that stakeholders who participated in the review believe this amendment would be beneficial and thus the Task Force is prepared to recommend this change to clarify these duties of the Board, in addition to any other duties already identified in the Act.

Recommendation #33

The Task Force recommends that:

- transitional provisions be drafted to ensure that where an appeal of a decision has been filed before the recommended changes respecting the appeal process come into effect, that the appeal will be heard and a decision rendered in accordance with the law in effect at the time the appeal was filed; and
- interest can only be considered in relation to claims filed after the provisions enabling the payment of interest come into effect.

The Task Force believes that it is appropriate and efficient to allow an appeal that was started before amendments to the *Workers' Compensation Act* come into effect to be completed using the structure and processes in place prior to the amendments. Interest should only be considered for claims initiated after the amendment enabling payment of interest comes into effect.

Recommendation #34

The Task Force recommends that the Act be amended to require a review of the Workers' Compensation Act no later than the year 2003 and that this review shall consider:

(a) the scope of disability;
(b) the effectiveness and appropriateness of the Board administering both the *Workers' Compensation Act* and the *Occupational Health and Safety Act*;
(c) the use of deeming;
(d) the effect of retirement on entitlement;
(e) the role and use of indexing of benefits;
(f) the method and limitations on calculating the maximum wage rate;
(g) the role and effectiveness of the office of the workers' advocate;
(h) the adequacy of the system for spouses; and
(i) any other matter that the minister may direct;

and the Task Force recommends that:
there be a comprehensive review of the Act in 2013.

Recommendation #35

The Task Force recommends that:
the Minister responsible for the Workers' Compensation, Health and Safety Board consult with workers, injured workers, employers, the board, the office of the workers' advocate and the Appeal Commission before initiating the next review of the *Workers' Compensation Act*.

Many review participants have raised concerns about the compensation system and the *Workers' Compensation Act* that were not within the scope of the Task Force review.

The Task Force endorses a review of the Act within the next four years and recommends that this review address the issues identified in Recommendation #34. Further the legislative review process should be put on a regular schedule beginning with a comprehensiver review of the Act in 2013.

During the Task Force review, stakeholders raised concerns about disabilities not considered 'compensable' work-related disabilities covered by workers' compensation. These disabilities include:

- *chronic pain;*
- *chronic stress;*
- *multiple chemical sensitivities;*
- *repetitive strain injuries; and*
- *environmental illnesses.*

These disabilities should be considered for inclusion in the definition of 'disability' in the next review.

Further in the context of 'scope of disability', some stakeholders expressed concern that some injuries sustained in the workplace may "fall through the cracks" given that they are not considered to be within the scope of disability defined in the Act, and yet, because they occurred in the workplace, they may not be covered by the Yukon Health Care Insurance system. The Task Force recommends that this issue also be addressed as a part of the 'scope of disability' discussion held during the next review.